The opinion in support of the decision being entered today
is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALINE FICHOU, JACQUES FIESCHI, CLAUDE GALAND, and
JEAN-FRANCOIS LE PENNEC

Appeal 2007-1410
Application 09/811,038[1]
Technology Center 2100

Decided: August 17, 2007

Before: ALLEN R. MacDONALD, ST. JOHN COURTENAY III, and
MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 8-23. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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[1] Application filed March 16, 2001. The application claims priority under 35 U.S.C. § 119 from European Application No. 00480027.2, filed March 20, 2000. The real party in interest is International Business Machines Corp.

Appellants' invention relates to reserving virtual connections having a designated Quality of Service (QoS) in an Internet Protocol network. A reservation request is delivered from a source workstation to a reservation server. The reservation server first validates whether the requesting user is allowed to access the server, and what rights that user possesses. If the validation step is successful, the reservation server proceeds to determine whether the capacity of the network is sufficient to meet the requirements of the reservation request. If capacity is sufficient, a virtual connection is established between an ingress node and an egress node of the network (Specification 4:7-26).

Claim 8 is exemplary:

8. A method for reserving a virtual connection from a source workstation to a destination workstation within a network to allow data packets to be transmitted between an ingress node of said source workstation and an egress node of said destination workstation, said method comprising:

sending a reservation request for a virtual connection from said source workstation to a reservation server, wherein said reservation server includes connection setup means for setting up a virtual connection that meets a predefined Quality of Service (QoS) requirement from said ingress node to said egress node;

determining whether or not said reservation request can be validated based on user information within said source workstation, wherein said user information is accessible by said reservation server,

in response to a determination that said reservation request can be validated based on user information within said source workstation, determining whether or not the capacity of said network is sufficient to meet requirements of said reservation request; and

in response to a determination that the capacity of said network being sufficient to meet requirements of said reservation request, establishing a virtual connection from said ingress node to said egress node.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kalmanek Jr.	US 6,694,429 B1	Feb. 17, 2004
Yazaki	US 6,768,738 B1	6,768,738 B1

Claims 8-14 and 16-22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kalmanek. Claims 15 and 23 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kalmanek in view of Yazaki.

Appellants contend that the Examiner erred because Kalmanek does not teach verifying network capacity in response to a determination that a reservation request can be validated based on user verification. The Examiner contends that Kalmanek teaches the two-step sequential process as claimed.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).[2]

[2] Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the

ISSUE

The principal issue in the appeal before us is whether the Examiner erred in holding that Kalmanek teaches the claim limitations of determining whether or not a reservation request can be validated based on user information within the source workstation, and in response to that determination, determining whether or not the capacity of the network is sufficient to meet requirements of the reservation request.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. Appellants invented a method and apparatus for reserving a virtual connection between source and destination workstations (Br. 2:17-18).

2. A reservation server first uses user information (user permissions, etc.) to validate the virtual connection reservation request (Br. 2:22-23).

3. In response to the user information being validated successfully, the reservation request is evaluated in terms of available network capacity (Br. 2:23-24).

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representative independent claim. *See In re Young,* 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii).

4. Should sufficient network capacity be determined, a virtual connection is established from the ingress node to the egress node (Br. 3:5-7).

Kalmanek

5. Kalmanek relates to reserving and committing network resources based on an authorized quality of service (col. 1, ll. 23-25).

6. A service provider may verify the specified quality of service for a call. For example, a calling party transferring data may subscribe for a service with a quality of service having a large bandwidth and small latency; in such an example, a service provider can verify the service subscription for the particular quality of service associated with the call for that particular calling party (col. 9, ll. 25-34).

7. Gate controllers can authenticate signaling messages and authorize requests for service so that communication services and certain service features are only provided to authorized subscribers. Upon receiving a setup request message from a calling party, the gate controller can authenticate the identity of the calling party and authorize the service sought by the calling party (col. 6, ll. 56-62).

8. Kalmanek recognizes that network resource management may be necessary, because some network edge devices in the communications network may not have sufficient processing capacity to process a large number of reservation messages typical for high volume call traffic (col. 10, ll. 47-56).

9. Resource management may be performed on a per-call basis. When an originating telephony interface unit sends a reservation request to a

network edge device, and receives back an acknowledgement for the reservation request, that acknowledgement constitutes confirmation that adequate bandwidth over both the access networks, and the communications network, is available (col. 11, ll. 3-13).

Yazaki

10. Yazaki teaches a packet including a source address, a destination address, a port number, and a QoS identifier (col. 2, ll. 51-67).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (*citing In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion.

ANALYSIS

Appellants argue that the Examiner failed to establish a prima facie case of obviousness, because Kalmanek does not teach determining whether

the capacity of the network is sufficient to meet the requirements of the reservation request, *in response to* a positive determination that a reservation request can be validated based on user information within the source workstation (Br. 6:21-27 and 7:23-25). Appellants argue that the sequence of steps is important because assessing network capacity through several nodes may require substantial processing resources and time (Br. 7:7-8). Performing the network capacity check only after a positive user verification therefore dramatically improves the efficiency of the claimed reservation of a virtual connection when applied to ordinarily connectionless networks (Br. 7:9-11).

The Examiner asserts that Kalmanek teaches two part, sequentially dependent verification (col. 9, ll. 18-34), and that Kalmanek teaches "verification" (col. 9, ll. 25-26), which is alleged to be a step of determining whether or not the network has the capacity to handle the subscriber's quality of service requirements (Examiner's Ans. 7:1-3). The section relied upon by the Examiner, however, is concerned with the meaning of the term "quality of service," and how a particular QoS may be requested. Kalmanek discloses that the service provider may verify the specified quality of service for the call (FF 6), but this statement is within the context of the provider verifying that calling party is entitled to receive such QoS.

> For example, a calling party transferring data may subscribe for a service with a quality of service having a large bandwidth and small latency; in such an example, a service provider can verify the service subscription for the particular quality of service associated with the call for that particular calling party.

FF 6. Kalmanek's teaching that a calling party subscribes for a service meets Appellants' concept of "user information," such as user rights. Elsewhere, Kalmanek explains his use of "subscriptions," in that "gate controllers can ... authorize requests for service so that communication services and certain service features are only provided to authorized subscribers" (FF 7). Contrary to the Examiner's position, therefore, these cited sections of Kalmanek do not illustrate a step of determining whether a network has sufficient capacity to handle the quality of service requested, but rather authenticating whether the requesting user has the appropriate level of authorization.

Within the body of the rejection, the Examiner also refers to Kalmanek (col. 10, l. 47 – col. 11, l. 2) as teaching determination of network capacity. First, this section does not show that the determination occurs in response to a successful user validation. Second, the section does discuss, in generalities, that resource management is needed because network edge devices may not have sufficient processing capacity to process a large number of reservation messages (FF 8), but it does not disclose actually assessing whether or not the capacity of the network is sufficient to meet the requirements of the current reservation request. Kalmanek teaches that in some embodiments, resource reservation includes transmitting a reservation request to an originating network edge device, and receiving back an acknowledgement of that request (FF 9). Reception of the acknowledgement occurs after availability of adequate bandwidth for the call over the access networks and communications network is confirmed

(FF 9). However, Kalmanek does not teach that this assessment of adequate bandwidth occurs in response to the validation of a reservation request.

Because Appellants have shown that the Examiner has failed to establish a prima facie case of obviousness, we will not sustain the Examiner's rejection of claims 8-23 under 35 U.S.C. § 103(a).

CONCLUSION OF LAW

We conclude that Appellants have shown the Examiner erred in rejecting claims 8-23. On the record before us, claims 8-23 have not been shown to be unpatentable.

DECISION

The Examiner's rejection of claims 8-23 is reversed.

REVERSED

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